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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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DEC 23 1994

In re Applications of

SCRIPPS HOWARD
BROADCASTING COMPANY

For Renewal of License of
Station WMAR-TV,
Baltimore, Maryland

and

FOUR JACKS BROADCASTING, INC.

For Construction Permit for a
New Television Facility on
Channel 2 at Baltimore,
Maryland

MM Docket No. 93-94

File No. BRCT-910603KX
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

DOCKET FILE COPY ORIGINAL

File No. BPCT-910903KE

To: The Honorable Richard L. Sippel
Administrative Law Judge

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW OF FOUR JACKS BROADCASTING, INC.
ON ISSUES ADDED FEBRUARY 1, 1994**

FOUR JACKS BROADCASTING, INC.

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Dated: December 23, 1994

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SUMMARY

Under the post-hearing issues against it, Scripps Howard bears the burden of establishing its character qualifications to remain the licensee of WMAR-TV in Baltimore. Scripps Howard has not sustained that burden. The record on the Scripps Howard issues reflects a markedly similar and disturbing pattern of conduct with reflect to the NBC correspondence and Covington notes that were used to prepare Scripps Howard's renewal expectancy showing a year after the fact. In both cases, the pertinent documents were initially concealed by Scripps Howard; lies and misleading statements were made to give the impression that the questioned documents did not exist; the documents were suddenly discovered and produced when attention fully focused on them; and dissembling rationalizations were given to "explain" the circumstances surrounding their sudden production.

With respect to the Covington notes, documentary evidence shows that the notes were sent by Ms. Barr to Scripps Howard's counsel as part of a specific package of documents which included a memo from Ms. Barr unequivocally indicating to Scripps Howard's counsel that the notes were prepared by Ms. Covington in lieu of her missing contemporaneous calendar. Yet in correspondence and testimony ranging from 18 days to six months later, Scripps Howard variously represented or suggested (i) that the Covington notes were contemporaneous with the station's 1991 renewal period; (ii) that they were in Ms. Covington's possession and Ms. Covington had taken them with her when she left the station in 1991; (iii) that the notes had been in Ms. Barr's possession in

1992 but that Ms. Barr had discarded them; and (iv) that Ms. Covington's notes were actually her calendar.

Moreover, the story does not end there, for less than ten days after the Judge added the issues against Scripps Howard, the Covington notes (and the memorandum indicating they were sent by Ms. Barr to Scripps Howard's counsel in June 1993) were suddenly "discovered" in both Ms. Barr's WMAR-TV office and in the files of Scripps Howard's FCC counsel. Ms. Barr offered patently inconsistent testimony on the circumstances surrounding their discovery.

With respect to the NBC correspondence, the record evinces no satisfactory explanation for, among other things, why Emily Barr stated at her first deposition that the correspondence was not in WMAR-TV files when it was, and why Scripps Howard -- in a pleading filed 24 hours before the NBC correspondence was physically produced -- represented that these documents "may or may not exist," that they were not in any files at WMAR-TV, and that "a search for the documents is likely to take some time and cause delay." There is no evidence in the record to rebut the clear inference that Scripps Howard personnel and/or its attorneys knew, at the time of this pleading, that the documents were at WMAR-TV. Absent this and other explanations, the record cannot sustain resolution of the NBC correspondence issue in Scripps Howard's favor.

All of these facts display a vast web of concealment, misrepresentation and lack of candor by Scripps Howard. Scripps Howard has come nowhere close to answering the many questions

its burden of proof, and must be disqualified under the issues against it.

By contrast, the record is entirely clear on the post-hearing issue against Four Jacks. While Scripps Howard has sought to fight a semantic battle over whether David, Robert and Frederick Smiths' roles as owners and executive officers of Sinclair Broadcast Group, Inc. technically constitute "employment," the real issue is what David, Robert and Frederick Smith intended to state when they pledged to resign their "then-current employment," and whether they had any conceivable motive to mislead the Commission with respect to their integration intentions.

The fact is -- and the evidence overwhelmingly shows -- that David, Robert and Frederick Smith have at all times been able and committed to manage Four Jacks' proposed Channel 2 station on a full-time basis while remaining owners and executive officers of Sinclair. They never intended, and never specifically pledged, to resign those positions -- indeed, in their original direct case testimony, they took pains to explain why they could fulfill their full-time integration commitments notwithstanding Sinclair's other media interests. And because they had neither any need nor any intention to resign their Sinclair positions, they had absolutely no motive to mislead the Commission into believing they would do so.

In light of all these facts, the only conclusion can be that, in pledging to resign their "then-current employment," David, Robert and Frederick Smith did not consider their roles as owners and executives of Sinclair to be encompassed by this

pledge. Their explanation on this point is supported by ample record evidence, and is entirely consistent with the fact that David, Robert and Frederick Smith never had any reason or any intention to resign their ownership and executive positions with Sinclair. In short, the issue against Four Jacks must be resolved in Four Jacks' favor.

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To: The Honorable Richard L. Sippel		
Administrative Law Judge		

**PROPOSED FINDINGS OF FACT AND CONCLUSIONS
OF LAW OF FOUR JACKS BROADCASTING, INC.
ON ISSUES ADDED FEBRUARY 1, 1994**

Four Jacks Broadcasting, Inc. ("Four Jacks"), by its attorneys, hereby submits its Proposed Findings of Fact and Conclusions of Law on the issues added against Scripps Howard Broadcasting Company ("Scripps Howard") by Memorandum Opinion and Order, FCC 94M-50, released February 1, 1994, and on the issue added against Four Jacks by Memorandum Opinion and Order, FCC 94M-51, released February 1, 1994.

I. INTRODUCTION

1. The issues added against Scripps Howard on one hand, and the issue added against Four Jacks on the other, present

wholly distinct factual situations and have produced enormously contrasting records. The issues against Scripps Howard were added on the basis of a long series of facts indicating that Scripps Howard withheld from the parties and the Commission critically relevant documents and misled them as to those documents' very nature and existence. The record generated at hearing under these issues only shows more of the same. It is a record of documents claimed not to exist and then belatedly "discovered"; of wildly varying explanations employed to rationalize away the clear facts; and of sadly implausible and fluctuating testimony by Scripps Howard's witnesses. There are simply too many unanswered questions on this record to warrant the conclusion that Scripps Howard has sustained its burden of establishing its basic qualifications to hold the license of Channel 2 in Baltimore.

2. By contrast, the post-hearing issue against Four Jacks is narrow and straightforward, centering on three words -- "then-current employment" -- used by Four Jacks' three integrated principals. Despite Scripps Howard's attempts to contort it into a war over semantics, the issue against Four Jacks is purely and simply a question of the principals' intent in making the questioned statements to the Commission. On this question, the record is clear and consistent -- Four Jacks' three integrated principals had absolutely no reason and no intent to mislead the Commission as to their intentions with respect to integrating into the management of Four Jacks' proposed station. The only countervailing evidence is in the form of various business documents which have nothing to do with the making of the

statements in question, and which at best go to the objective correctness of those statements -- not the principals' intent in making them.

3. Accordingly, as set forth in detail below, Scripps Howard must be found to lack the basic character to remain licensee of WMAR-TV. The issue against Four Jacks, however, must be resolved in Four Jacks' favor.

II. PRELIMINARY STATEMENT

4. The mutually exclusive applications of Scripps Howard for renewal of the license of WMAR-TV, Baltimore, Maryland, and of Four Jacks for authority to construct a new television station on Channel 2 at Baltimore, Maryland, were designated for hearing by a Hearing Designation Order released on April 1, 1993, 8 FCC Rcd 2326 (M.M. Bur. 1993) ("HDO"). The HDO specified the following hearing issues:

- (1) To determine with respect to Four Jacks whether there is reasonable possibility that the tower height and location proposed would constitute a hazard to air navigation.
- (2) To determine which of the proposals would, on a comparative basis, better serve the public interest.
- (3) To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. By Memorandum Opinion and Order, FCC 93M-315 (released June 1, 1993), the air hazard issue (Issue 1) was resolved by

summary decision in favor of Four Jacks. Thus, no further resolution of this issue is required.

6. Hearings were held in Washington, D.C. on the standard comparative issue (including Scripps Howard's claim to a renewal expectancy) on November 8, 9, 10, 12, 15, and 16, 1993. Because the comparative aspect of this case is subject to the Commission's "freeze" on comparative hearing proceedings (see Public Notice, "FCC Freezes Comparative Proceedings," FCC 94-41 (February 25, 1994), modified, FCC 94-204 (August 4, 1994)), pursuant to the Presiding Judge's directive, these Proposed Findings and Conclusions do not address the standard comparative issue or Scripps Howard's entitlement to a renewal expectancy.^{1/}

7. Following the conclusion of the Phase I hearing, by Memorandum Opinion and Order, FCC 94M-50 (released February 1, 1994) ("Scripps Howard MO&O"), the Presiding Judge added the following issues against Scripps Howard:

- (A) To determine whether Scripps Howard Broadcasting Company misrepresented or was lacking in candor in connection with deposition testimony and/or pleadings and/or delayed production in discovery relating to NBC documents used in connection with preparing a hearing exhibit that was relevant to the renewal expectancy.
- (B) To determine whether Scripps Howard Broadcasting Company misrepresented or was lacking in candor in

^{1/} Four Jacks notes, however, that the facts set forth herein with regard to the post-hearing character issues against Scripps Howard bear on Scripps Howard's entitlement to a renewal expectancy, in that they concern documents utilized by Scripps Howard to support its renewal expectancy claim. Four Jacks reserves the right to address this aspect in later findings.

connection with deposition testimony and/or pleadings and/or correspondence served on the Commission relating to the status of Janet Covington's diary of 1991 and/or Janet Covington's notes of 1992 which were used in connection with preparing a hearing exhibit that was relevant to the renewal expectancy.

- (C) To determine the effect of the foregoing issues on the qualifications of Scripps Howard Broadcasting Company to hold a Commission license for Channel 2 in Baltimore.

8. By a separate Memorandum Opinion and Order also released February 1, 1994, FCC 94M-51 ("Four Jacks MO&Q"), the Presiding Judge added the following issues against Four Jacks:

- (A) To determine whether Four Jacks Broadcasting, Inc. misrepresented or lacked candor before the Commission in its application, pleadings, documents and/or testimony regarding its integration commitment to resign then current employment of David D. Smith, Robert E. Smith, and/or Frederick G. Smith.
- (B) To determine the effect of the foregoing issue on the qualifications of Four Jacks Broadcasting, Inc. to receive a Commission license for Channel 2 in Baltimore, Maryland.

9. Hearings on the issues added February 1, 1994 were held in Washington, D.C. on September 7, 8, 12, 13, and 14, 1994. By Order, FCC 94M-594 (released October 27, 1994), the Presiding Judge accepted joint corrections to the transcript and closed the record of Phase II.

III. PROPOSED FINDINGS OF FACT

A. THE ISSUES AGAINST SCRIPPS HOWARD

1. The Events Leading Up to Addition of the Misrepresentation/Lack of Candor Issues

(a) The Covington Notes

10. In its direct case exhibits in this proceeding exchanged on September 13, 1993, Scripps Howard went to great lengths to make it appear that WMAR-TV had a regular documented ascertainment process between May 30 and September 3, 1991.^{2/} The September 1993 direct written testimony of Emily Barr, Acting General Manager of WMAR-TV at the time of the first hearing,^{3/} represented that "[d]uring the renewal period WMAR-TV's management and staff regularly conducted individual ascertainment interviews with a broad spectrum of leaders of the community and with members of the general public." (Scripps Howard Ex. 3A, p. 10, para. 23). Under questioning, however, Ms. Barr admitted that all of the interviews with community leaders between May 30 and September 3, 1991 were "informal." Between May 30 and September 3, 1991, the personnel at WMAR-TV did not memorialize

^{2/} Scripps Howard acquired the license of WMAR-TV on May 30, 1991. Four Jacks' mutually exclusive application was filed on September 3, 1991. Accordingly, by Order, FCC 93M-337 (released June 7, 1993), the Presiding Judge defined the period May 30 - September 3, 1991 as the relevant period of WMAR-TV operation for purposes of evaluating Scripps Howard's claim to a renewal expectancy.

^{3/} On October 10, 1994, Broadcasting & Cable magazine reported that Ms. Barr had left WMAR-TV to become President/General Manager of non-Scripps Howard owned WTVD(TV), Durham, North Carolina. See "Fates & Fortunes," Broadcasting & Cable (Oct. 10, 1994), at 118. Despite Ms. Barr's status as Scripps Howard's central witness in this case, Scripps Howard has yet to report Ms. Barr's departure in this proceeding.

in writing any effort to ascertain community problems, needs and interests. (Tr. 561, 976). Ms. Barr wrote nothing down other than notations in her calendar which contained a name and sometimes an organization. (Tr. 563, 571). When Arnold J. Kleiner, the WMAR-TV General Manager between May 30 and September 3, 1991, spoke to community leaders during that time period, he did not put in writing any of the issues discussed. (Tr. 975). No one at the station ever wrote down a list of issues given by community leaders. (Tr. 563). According to Ms. Barr: "There was nothing in writing. It was a very informal process." (Tr. 570).

11. The direct case exhibits introduced by Scripps Howard on the renewal expectancy issue masked the fact that Scripps Howard lacked documentary evidence prepared contemporaneously with the license renewal period at issue in this case (May 30, 1991 - September 3, 1991) demonstrating the ascertainment process. (See, e.g., Scripps Howard Ex. 3A). During cross-examination at the November 1993 hearing, Ms. Barr conceded that there were no written community ascertainment reports for the second and third quarters of 1991. (Tr. 574-75). She revealed that in the summer of 1992 she was asked by Scripps Howard's FCC counsel to put together an exhibit on ascertainment. (Tr. 576). Counsel gave Ms. Barr, who was Director of Broadcast Operations at the time, a format indicating what information would be necessary -- specifically the date of any contact, the person contacted, that person's title, what issue was discussed, and what programming resulted. (Tr. 580).

12. Ms. Barr testified that she spoke to the individuals who were primarily responsible for conducting ascertainment interviews and asked them to retrieve their personal calendars and any information they might have with respect to ascertainment interviews. (Tr. 576). The only people who had any information were Ms. Barr herself, Mr. Kleiner, Maria Velleggia, the station's Director of Public Relations, and the former Director of Public Affairs, Janet Covington, who had left the station in December 1991. (Tr. 576-77). All they had were their calendars from 1991. (Tr. 657). Ms. Barr also spoke to other department heads and asked them if they had information but they had nothing. (Tr. 577, 658-59).

13. Other than the 1991 calendars of Ms. Barr, Mr. Kleiner, Ms. Velleggia and Ms. Covington, there was no documentation contemporaneous with the May 30 - September 3, 1991 renewal period reflecting ascertainment interviews. Moreover, all that the calendars showed were meetings at stated times with another person. (Tr. 657). Ms. Barr went through her own calendar and those of Mr. Kleiner and Ms. Velleggia. (Tr. 661-63). In the summer of 1992, Ms. Barr asked Ms. Covington, who had left the station, for her calendar. (Tr. 577, 589). According to Ms. Barr, Ms. Covington said that Barr would not be able to interpret her calendar and Covington wasn't comfortable giving Barr the calendar. (Tr. 591). She testified that Ms. Covington's handwriting and recordkeeping were "very unique and difficult to decipher." (Tr. 589).

14. During cross-examination at the November 1993 hearing, Ms. Barr revealed that rather than using Ms. Covington's

contemporaneous 1991 calendar, she instead used notes that Ms. Covington prepared in 1992, along with the 1991 calendars of Mr. Kleiner, Ms. Velleggia and herself, to prepare Attachment E to her direct case testimony -- the attachment that purports to reflect ascertainment interviews by WMAR-TV staff with community leaders during the 1991 renewal period and the programming responsive thereto. A number of the purported ascertainment interviews contained in Attachment E to Ms. Barr's direct case exhibit were based solely on Ms. Covington's notes. (Scripps Howard Ex. 3, Attach. E; Tr. 592).

15. Janet Covington was never identified as a witness on the renewal expectancy issue by Scripps Howard. Prior to the September 13, 1993 exchange of direct cases, the only reference to any "notes" by Ms. Covington was contained at the end of a letter dated July 13, 1993 from Scripps Howard's counsel which accompanied additional document production during discovery. The letter stated:

Finally, Janet Covington, the former public relations director of WMAR-TV who retired in December, 1991, at one time possessed personal notes that recorded various ascertainment meetings in which she participated during the relevant period. These notes were not retained in any files at WMAR-TV. Scripps Howard recently contacted Ms. Covington to ascertain whether she possessed any of these notes and determined that she did not.

(Tr. 666 (emphasis added)). The letter did not indicate that Ms. Covington had prepared her notes in 1992 or that Scripps Howard had prepared a listing of purported ascertainment interviews in

1992 based on Ms. Covington's notes before they were discarded.
Id.

16. It was not until Scripps Howard exchanged its direct case exhibits on September 13, 1993 that any significance could be attached to Ms. Covington's "notes" and, once again, there was no evidence that the notes were prepared for the first time in 1992. At footnote 6 of her direct case testimony (Scripps Howard Ex. 3, p. 16), Ms. Barr stated:

The material in Attachment E was originally prepared in 1992 under my direction from information gathered by individuals working under my supervision. In preparing the attachment, I relied upon my own calendar and recollections and the calendars and recollections of Arnold Kleiner and Maria Velleggia. In addition, I relied upon discussions with and notes of Janet Covington, the former Public Affairs Director. At that time, Ms. Covington already was a former employee of the station who had volunteered to help me on her own time and who had kept these notes in her possession when she left the station. It did not occur to me to preserve Ms. Covington's handwritten notes after our discussions. (Emphasis added).

17. At the November 8, 1993 hearing session, Ms. Barr was questioned concerning the Covington notes:

Q. You referred to some handwritten notes that Ms. Covington had.

A. Yes.

Q. What did you do with those handwritten notes?

A. I threw them away.

Q. When did you throw them away?

A. In the summer of 1992.

Q. How do you know you threw them away in the summer of 1992?

A. Well, Janet Covington was -- had been at the station for a very long time and did everything long-hand, and her handwriting, to be polite, was difficult to read. I had gotten used to being able to read it, but I didn't -- it never occurred to me at the time that I would need this or that anybody would even be able to decipher the way in which she scribbled things on paper. So after discussing them with her and going over what I needed and pulling it out for this document, I then saw no further need for them so I did not keep the notes.

Q. When you say you did not keep them, did you give them back to Ms. Covington or --

A. No, I, I --

Q. -- you just tossed them away?

A. I threw them in the wastebasket.

Q. And you didn't think that you should preserve them?

A. It never occurred to me.

Q. Did you consult with anybody before you threw them away?

A. No, because it didn't occur to me.

(Tr. 582-83 (emphasis added)). Following this testimony and some further questioning by counsel for Four Jacks as well as by the Judge, the Judge ruled that Scripps Howard must turn over that portion of the earlier draft of Attachment E which reflected the information provided by Ms. Covington. (Tr. 593).

18. Scripps Howard turned over the material that the Judge ordered to be produced at the beginning of the November 9, 1993 hearing session. It was during that hearing session that the

subject of Attachment E, containing the purported 1991 ascertainment interviews, came up. The following testimony ensued:

Q. . . . [W]hen you finished with the calendars what did you do with them?

A. I think I stacked them up somewhere in my office.

Q. They were filed?

A. At that point it wasn't in a file. It was just on the floor.

Q. And did they remain there until 1993?

A. No. In fact, at one point I gave them back to the individuals who had lent them to me.

Q. Approximately when was that?

A. Sometime in the latter part of 1992.

Q. Now, when you finished with Ms. Covington's notes where did you place them?

A. Probably in that same pile.

Q. And how long did they remain in the same pile?

A. Well, the pile grew substantially as I worked on the gathering of these documents and because this particular ascertainment exhibit was going through several metamorphoses. I, I would -- as I -- as we made changes to it and updated it I would discard the older versions of it. I didn't -- I was just getting confused by having too many copies of the same thing. So at some point along those -- at some point along that continuum I threw the notes away because it at that point didn't seem to me to be necessary to keep them.

Q. And do you recall when that was in the continuum?

A. I really don't recall.

(Tr. 666-67).

* * * *

Q. Did you ever give Ms. Covington's notes back to her?

A. No, I did not.

(Tr. 668-69).

(b) The NBC Correspondence

19. On July 16, 1993, Emily Barr was deposed on the renewal expectancy issue. During her deposition, Ms. Barr was questioned about various documents that had been produced by Scripps Howard. Ms. Barr was asked the following series of questions at her deposition about her 1992 contacts with NBC (of which WMAR-TV was an affiliate during the May 30 - September 3, 1991 renewal period) to obtain documents from the network to support Scripps Howard's renewal expectancy showing:

Q. You mentioned that you gave NBC a list of issues?

A. Yes.

Q. Was that in writing?

A. No, it was not. Actually it was faxed to them.

Q. Would you have a copy of that fax?

A. No, I don't.

Q. Do you know what the issues were that you asked for?

A. Yes. They were the issues that were on our programs issues lists from second quarter and third quarter 1991.

Q. All of the issues that were on the list or just some of them?

A. All of the issues relating to this period of time.

Q. Who did you contact at NBC?

A. I don't remember the woman's name, to be honest with you. It was an archivist or the manager of archives.

Q. Was that to whom you faxed the letter?

A. Yes.

(Tr. 1741-42 (emphasis added)).

20. On October 20, 1993, Four Jacks submitted to the Presiding Judge a Request for Issuance of Subpoena Duces Tecum which sought to require NBC to produce the correspondence from August 1992 that Ms. Barr claimed she did not have. By Order, FCC 93M-672, released October 22, 1993, the Presiding Judge denied the subpoena request. Four Jacks thereupon filed a Request for Permission to File an Appeal. In an Order, FCC 93-678, released October 27, 1993, the Judge set a prehearing conference for 9:30 a.m. on October 27, 1993 and ordered Scripps Howard to file a responsive pleading to Four Jacks' Request for Permission to File an Appeal by 12:00 noon on October 26, 1993.

21. In response to the Judge's Order, Scripps Howard filed on October 26, 1993 a pleading entitled "Opposition to Request for Permission to File an Appeal of the Order Denying the Request for Issuance of a Subpoena Duces Tecum" ("Opposition"). In that pleading, Scripps Howard argued that Four Jacks' Request for Permission to Appeal should be denied because "the distraction

and likely delay would significantly prejudice WMAR-TV. . . ."

See Opposition at 3. Scripps Howard's Opposition stated:

Four Jacks, therefore, was aware of the possible existence of the documents sought by the subpoena and that those documents were not in the possession of WMAR-TV over three (3) months ago. . .

(Opposition at 2-3 (emphasis added)). It also stated:

Four Jacks' subpoena seeks documents for a broad time period that may or may not exist. Even if the subpoena were issued, a search for the documents is likely to take some time and cause delay.

(Opposition at 3 (emphasis added)).

22. The prehearing conference was held as scheduled at 9:30 a.m. on October 27, 1993. At the conference, Scripps Howard revealed that it had the correspondence in question between NBC and WMAR-TV that was responsive to the subpoena request. (Tr. 410). After this startling revelation, the Judge ordered from the bench that the documents be immediately turned over to Four Jacks. (Tr. 415).

23. At the November 9, 1993 hearing session, Ms. Barr was asked about the documentation she received in 1992 from NBC (Four Jacks Ex. 19). The following testimony ensued concerning her correspondence with NBC:

Q. And what did you do with the correspondence with NBC? Did you keep that at the station?

A. The -- are you talking about the memo that's Exhibit ----

Q. Exhibit 19.

A. -- 19?

Q. Right.

- A. It went into a file at the station.
- Q. And did it remain in that file at the station?
- A. Yes, it did.
- Q. Until you were asked to produce it in this proceeding?
- A. That's correct.
- Q. And that was as of October -- as of the judge's ruling about a week ago?
- A. I think. I don't remember the date, but yes, it was recently.

(Tr. 769 (emphasis added)).

2. The Scripps Howard Memorandum Opinion and Order

24. In his Scripps Howard MO&Q, FCC 94M-50, released February 1, 1994, the Presiding Judge added the following issues against Scripps Howard:

- A. To determine whether Scripps Howard Broadcasting Company misrepresented or was lacking in candor in connection with deposition testimony and/or pleadings and/or delayed production in discovery relating to NBC documents used in connection with preparing a hearing exhibit that was relevant to the renewal expectancy.
- B. To determine whether Scripps Howard Broadcasting Company misrepresented or was lacking in candor in connection with deposition testimony and/or pleadings and/or correspondence served on the Commission relating to the status of Janet Covington's diary of 1991 and/or Janet Covington's notes of 1992 which were used in connection with preparing a hearing exhibit that was relevant to the renewal expectancy.